



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,158	11/13/2001	Earl J. Votolato	SPELL-004C	8649

34284 7590 05/19/2003

ROBERT D. FISH; RUTAN & TUCKER, LLP
P.O. BOX 1950
611 ANTON BLVD., 14TH FLOOR
COSTA MESA, CA 92628-1950

EXAMINER

DRUAN, THOMAS J

ART UNIT	PAPER NUMBER
----------	--------------

3724

DATE MAILED: 05/19/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,158

Applicant(s)

VOTOLATO, EARL J.

Examiner

Thomas J. Druan, Jr.

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. In view of the appeal brief filed on 12 February 2003, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 103

2. Claims 1 & 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,007,171 to Horning, Jr. (hereinafter Horning) in view of Chen.

Horning discloses the invention substantially as claimed including a first arm 13 and a second arm 14, each with respective inner and outer surfaces, wherein said arms are in a tensioned movable opposed relationship to each other, and wherein said first arm has a blade 29 integral with the inner surface and wherein said second arm has a laterally open concave groove 28 in the inner surface of the second arm opposing said blade (fig. 7). Horning discloses finger recesses 19 on the outer surface of the second leg, but does not have outer surfaces of the first and second arms that are concavely

contoured. Chen discloses having concavely contoured outer surfaces to enhance manual grasping of the bag opener. It would have been obvious to one skilled in the art at the time of the invention to add the concavely contoured outer surfaces of Chen on the first and second arms of Horning in order to enhance manual grasping of the bag opener of Horning.

3. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horning in view of Chen in further view of US 5,103,562 to Braatz (hereinafter Braatz).

The combination of Horning in view of Chen discloses the invention substantially as claimed, but lacks an apparatus fabricated as single piece of a rigid plastic material (regarding claims 2-3), and alternatively lacks an apparatus fabricated as single piece of a rigid plastic material except for a metal blade (regarding claims 4-5). Braatz teaches making a package opening tool out of a single piece of rigid plastic including the blade or making a package opening tool out of a single piece of material except for a metal blade (column 2, lines 25-30), and therefore also teaches the equivalence of having an integral molded blade or having a separate metal blade. Therefore, it would have been obvious to one skilled in the art to make the bag slitting apparatus of Horning in view of Chen either as a single piece of rigid plastic material (as per claims 2-3) or as a single piece of material except for a metal blade (as per claims 4-5) since Braatz teaches the equivalence of integral plastic blade as and separate metal blades in a package opening tool. Furthermore, it would have been obvious to one skilled in the art at the time of the invention to make the apparatus of Horning in view of Chen out of a single piece

Art Unit: 3724

of material in order to simplify manufacture, or conversely to have made a one-piece apparatus except for a metal blade since metal blades are stronger than plastic blades.

Response to Arguments

4. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Druan, Jr. whose telephone number is 703-308-4200. The examiner can normally be reached on M-F (8:30-6:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

ajp

tjd

May 11, 2003



Allan N. Shoap
Supervisory Patent Examiner
Group 3700